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October 5, 1998

Magalie Roman Salas
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DOCKET FILE COPY ORIGINAL

Re: CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-15, 98-78, 98-91, and CCB/CPD No. 98-15, and RM-9244

Dear Ms. Salas:

Attached for filing in the referenced dockets, on behalf of Qwest Communications Corporation ("Qwest"), are the original and four copies of Qwest's Opposition to the Petition for Reconsideration filed by SBC Communications Inc., Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell and the Petition for Partial Reconsideration or, Alternatively, For Clarification, filed by the Bell Atlantic Telephone Companies of the Commission's August 7, 1998 Memorandum Opinion and Order in the captioned proceedings.

Please call me if you have any questions.

Respectfully submitted,

Linda L. Oliver

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Counsel for Qwest Communications Corporation

Enclosures

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Before the
Federal Communications Commission
Washington, D.C. 20554

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OCT - 5 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)

Deployment of Wireline Services Offering)
Advanced Telecommunications Capability)

CC Docket No. 98-147

Petition of Bell Atlantic Corporation)
For Relief from Barrier to Deployment of)
Advanced Telecommunications Services)

CC Docket No. 98-11

Petition of US West Communications Inc.)
For Relief from Barrier to Deployment of)
Advanced Telecommunications Services)

CC Docket No. 98-26

Petition of Ameritech Corporation to)
Remove Barriers to Investment in)
Advanced Telecommunications Technology)

CC Docket No. 98-32

Petition of the Alliance for Public)
Technology Requesting Issuance of Notice)
of Inquiry and Notice of Proposed)
Rulemaking to Implement Section 706 of)
the 1996 Telecommunications Act)

CCB/CPD No. 98-15
RM 9244

Petition of the Association for Local)
Telecommunications Services (ALTS) for a)
Declaratory Ruling Establishing Conditions)
Necessary to Promote Deployment of)
Advanced Telecommunications Capability)
Under Section 706 of the)
Telecommunications Act of 1996)

CC Docket No. 98-78

Southwestern Bell Telephone Company,)
Pacific Bell, and Nevada Bell Petition for)
Relief from Regulation Pursuant to Section)
706 of the Telecommunications Act of 1996)
and 47 U.S.C. § 160 for ADSL)
Infrastructure and Service)

CC Docket No. 98-91

OPPOSITION OF QWEST COMMUNICATIONS CORPORATION TO PETITIONS FOR RECONSIDERATION

Qwest Communications Corporation ("Qwest") hereby respectfully submits its opposition to the Petition for Reconsideration filed by SBC Communications Inc., Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell ("SBC") and the Petition of the Bell Atlantic Telephone Companies ("Bell Atlantic") for Partial Reconsideration or, Alternatively, For Clarification, of the Commission's August 7, 1998 Memorandum Opinion and Order in the captioned proceedings. 1/

The petitioners challenge the Advanced Services Order on two grounds. First, they argue that the Commission's requirement that incumbent local exchange carriers ("ILECs") are required to provide access to loops "conditioned" for use with xDSL electronics violates the Eighth Circuit's decision in Iowa Utilities Board v. FCC. 2/ Specifically, the petitioners argue that the mandated provision to competitors of such "conditioned" loops would constitute the required provision of a "superior in quality" facility to a requesting carrier in alleged violation Iowa Utilities Board. Second, the petitioners challenge the Commission's view that Section 706 of the 1996 Telecommunications Act, 47 U.S.C. § 157 note, does not

1/ Deployment of Wireline Services Offering Advanced Telecommunications Capability, Petition of Bell Atlantic Corp., et al. CC Docket Nos. 98-147, et al., FCC 98-188 (released August 7, 1998) ("Advanced Services Order").

2/ Iowa Utilities Board v. FCC, 120 F.3d 753, 812-13 (8th Cir. 1997), cert. granted, 118 S.Ct. 879 (1998) ("Iowa Utilities Board").

constitute an independent grant of forbearance authority to the Commission. The Commission should reject both grounds for reconsideration for the reasons discussed below.

I. THE REQUIREMENT TO PROVIDE ACCESS TO CONDITIONED LOOPS.

The petitioners lack any basis for challenging the Commission's decision requiring ILECs to provide competitors with access to loops conditioned to be attached to xDSL electronics. First, the requirement that ILECs provide access to conditioned loops was established long ago in the Commission's August 1996 Local Competition Order.^{3/} The petitioners should have sought reconsideration or judicial review of the Local Competition Order on this point. The Local Competition Order is now final and cannot be subject to reconsideration or further judicial review. The petitioners are barred from challenging it now, on reconsideration of the Advanced Services Order.^{4/}

The petitioners attempt to dodge this problem by asserting that the conditioned loops requirement violates the Eighth Circuit's decision in Iowa

^{3/} Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98, 95-185, First Report and Order, FCC 96-325, released August 8, 1996, 11 FCC Rcd 15499, at para. 380 (1996), aff'd in part and rev'd in part, Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997), cert. granted, 118 S.Ct. 879 (1998) ("Local Competition Order").

^{4/} The Commission itself made clear in the Advanced Services Order that the requirement to provide access to conditioned loops had already been established in the August 1996 Local Competition Order. Advanced Services Order at para. 152, citing Local Competition Order at paras. 380-82.

Utilities Board, which invalidated the Commission's "superior in quality" rule, adopted in the same Local Competition Order that established the conditioned loop requirement. ^{5/} The problem with this argument is that the requirement to condition a loop so that it can be combined with xDSL electronics does not constitute the provision of a "superior in quality" facility or functionality. Rather, it simply involves removing certain impediments in the existing copper loop to enable that loop to be used with advanced electronics that are provided by the competitor. In fact, the copper loop conditioned for xDSL, when provided to a competitor without xDSL electronics, is actually not capable, without xDSL electronics, of providing service in any way superior to the conventional local exchange service provided by the ILEC over a loop that has not been conditioned. Moreover, as the FCC made clear, the ILECs are not required to do any more than what is "technically feasible." ^{6/}

In any case, both Bell Atlantic and SBC (along with the other RBOCs and GTE) have already begun to provide their own xDSL services, so even if the prohibition on requiring a "superior in quality" facility did apply in the context of conditioned loops, the petitioners (and the other RBOCs and GTE, at a minimum)

^{5/} Iowa Utilities Board, 120 F 3d 753, 812-13.

^{6/} Advanced Services Order at para. 152, citing Local Competition Order at para. 382.

would have to provide competitors with access to those conditioned loops, since they are already providing such access to themselves. ^{7/}

It should be apparent that the petitioners' real goal here is to be able to stop competitors from providing xDSL services over existing copper ILEC loops until the ILECs themselves are ready to provide xDSL services. Taken to its extreme, the petitioners' argument would permit an ILEC to refuse to condition any copper loop until the ILEC itself had already decided to provide xDSL services over that very loop. Of course at that point, the competitor would have to win the customer away from the ILEC, because the customer would by then, by definition, be an ILEC advanced services customer.

At bottom, the petitioners' complaint is not really about having to prepare or "condition" copper loops -- an activity for which they would be

^{7/} All of the RBOCs and GTE have announced deployment of xDSL technology in their regions. See "Bell Atlantic's New ISP Partnership Program Will Bring Customer Choice to the High-Speed Internet Access Market," Bell Atlantic Press Release, September 30, 1998 (announcing rollout of ADSL services in at least four states and the District of Columbia by early 1999); "Bell Atlantic to Offer High-Speed Links to Net," Washington Post, June 4, 1998, at E3; "SBC's Pacific Bell Unit Unveils ADSL Plans, Files Pricing Tariff," Telecommunications Reports, June 1, 1998, at 34 (SBC); "Bells, GTE, and Computer Giants Say ADSL Working Group Will Speed Deployment," Telecommunications Reports, February 2, 1998, at 23-24 (US West); "BellSouth Plots Ambitious ADSL Plan," Multichannel News, May 25, 1998, at 1 (BellSouth and Ameritech); News Release, "BellSouth Announces Aggressive 30 Market Roll-Out of Ultra-High Speed BellSouth.Net FastAccess ADSL Internet Services," May 20, 1998, at www.bellsouthcorp.com; "GTE Jumps Into xDSL Game as UAWG Works on Standard," Telecommunications Reports, April 20, 1998, at 18; "GTE to Offer Ultra-Fast Internet Access," April 13, 1998, Announcement on GTE website, www.gte.com/g/news/adsl041398.html.

compensated by the requesting carrier. ^{8/} The ILECs' real complaint is that they cannot block CLECs from employing ILEC unbundled loops to provide advanced services in competition with the ILECs. If the Commission were to grant reconsideration, the ILECs would be able to completely block any competitive provision of xDSL services over copper loops until the ILECs were ready themselves to roll out the service. This obviously would leave consumers, particularly those without other options for obtaining broadband services, with no ability to reap the benefits of advanced technology.

It also is telling that the ILECs demanded, in the very same forbearance petitions, that the Commission exercise its forbearance authority to permit them to refuse to competitors access to loops *equipped* with xDSL electronics. If the ILECs had succeeded on that point as well, ^{9/} they could have accomplished a total lockout of competitors from the advanced services market, by

^{8/} Bell Atlantic complains that consumers will have to pay for its activities in preparing loops for requesting carriers. Bell Atlantic Petition at 5. This complaint is entirely unfounded. The Commission has made it clear, both in the Local Competition Order and in the Advanced Services Order, that "[t]he requesting carrier bears the cost of such conditioning." Advanced Services Order at para. 53 n.98, citing Local Competition Order at para. 382.

^{9/} The Commission squarely rejected this ILEC argument in the Advanced Services Order, where it held that the Act's market-opening provisions, including the network element provisions of Section 251(c)(3), apply equally to advanced technologies such as xDSL. Advanced Services Order at para. 59 ("the facilities and equipment used to provide advanced services are network elements subject to the obligations in Section 251(c)(3)").

preventing these competitors from employing *any* ILEC loops to deploy competitive advanced services. 10/

II. SECTION 706 AS AN INDEPENDENT GRANT OF FORBEARANCE AUTHORITY.

The petitioners also seek to overturn the Commission's decision that it Section 706 does not confer on the Commission additional authority to forbear in circumstances under which Section 10 of the Act, 47 U.S.C. § 160, would not permit it to forbear. The petitioners advance nothing new in the way of arguments to support their request, instead merely parroting the arguments they made in their forbearance petitions. As the Commission correctly concluded in the Advanced Services Order, the Commission plainly lacks the legal authority to forbear under Section 706 when it cannot justify such forbearance pursuant to the specific test set forth in the Act's forbearance section, Section 10.

First, Section 706 by its own terms is not an independent grant of forbearance authority. Rather, it merely directs the Commission to use the forbearance authority that is specifically granted in Sections 10 and 332 in order to promote deployment of advanced services. This is clear from the context: for example, Section 706 also directs the Commission to use price cap regulation

10/ As Qwest discussed in detail in its comments on the Advanced Services NPRM, competitors seeking to provide broad-based competitive advanced services need access to loops that are already equipped with ILEC xDSL electronics and ILEC interoffice packet transport and switching, as well as requiring the option of employing ILEC conditioned loops. See Comments of Qwest Communications Corporation, filed September 25, 1998, in CC Docket No. 98-147, at 63-66.

toward the same end, even though the FCC's authority to adopt price cap regulation for interstate telecommunications service was well-settled when the 1996 Act was enacted. ^{11/}

Moreover, unlike the detailed standards governing the specific forbearance authority provided in Sections 10 and 332, Section 706 of the Act contains no substantive standards governing when forbearance would be required or permitted. ^{12/} Congress clearly expressed its intent in Section 10(d) that the Commission may not forbear from enforcing Sections 251(c) and 271 until those sections are fully implemented. When it does consider whether to forbear from such key pro-competitive provisions, it must evaluate the state of the market at the time the request for forbearance is made, and make all the factual and policy determinations required by Sections 10's specific three-part test.

There also is no basis for the FCC to allow the RBOCs into the interLATA business before they have met the requirements of Section 271. Congress made it clear that regardless of the nature of the interLATA services, the RBOCs must meet certain requirements before being allowed to provide them. The fact that RBOCs cannot offer these services today reflects a considered and balanced policy choice that is at the heart of the 1996 Act: RBOC entry into interLATA markets should be contingent on full opening of local markets in order to

^{11/} See National Rural Telecom Assn v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

^{12/} 47 U.S.C. § § 160(a), 332, 157n.

give the RBOCs a powerful incentive to open their local networks to competitors.

The wisdom of that choice applies with equal force to the interLATA services described in the petitions for forbearance that the Commission denied in the Advanced Services Order. The construction of interLATA networks for data purposes is still construction of interLATA networks. The Commission needs to hold tight to the carrot of interLATA entry if it is to see the benefits of the Act realized.

Likewise, Section 251(c)(3) of the Act does not contemplate that the Commission will freeze the RBOC network in time, allowing the RBOCs to deny access to the network simply because it evolves with technological change, as the Commission recognized elsewhere in the Advanced Services Order.^{13/} Instead, that section gives requesting carriers access to all the "features, functions, and capabilities" of the network. 47 U.S.C. § 153(29). Indeed, Congress understood that telecommunications networks are dynamic and fast-changing, and that many different technologies can be used to provide the same services. If Congress had intended to draw lines around services or network facilities or technologies, it would have done so.

In sum, the RBOCs' proposed end run around the Act's statutory forbearance framework should not be countenanced, and their petitions for reconsideration must be denied.

^{13/} Advanced Services Order at para. 57.

CONCLUSION

For the reasons given, the Commission should deny the petitions for reconsideration.

Respectfully submitted,

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October 5, 1998

CERTIFICATE OF SERVICE

I, Barbara E. Clocker, hereby certify that on this 5th day of October, 1998, a copy of the attached Opposition of Qwest Communications Corporation to the Petition for Reconsideration filed by SBC Communications Inc., Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell and the Petition of the Bell Atlantic Telephone Companies for Partial Reconsideration or, Alternatively, For Clarification, of the Commission's August 7, 1998 Memorandum Opinion and Order in CC Docket Nos. 98-147, et al, was hand delivered or sent by First Class Mail (where indicated) to the parties listed below


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